

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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LOUIS MERRIWEATHER
Petitioner,

-vs-

Case No.1:02cv369
(Spiegel,Sr.J.;Hogan.M.J.)

TIM BRUNSMAN,WARDEN
Respondent,

SUPPLEMENTAL OPPOSITION

1.Procedural Default(s);

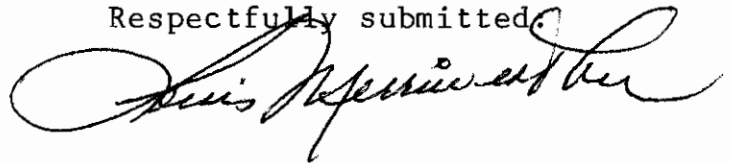
In the exhaustion of his state remedies, the last state court to render a judgment against petitioner did not clearly and expressly base its judgment of denial on procedural default, the Ohio Supreme Court only denied the application for appeals.

"[I]f a petitioner procedurally defaults a claim in state court that procedural default carries over to the federal court and precludes habeas review of that claim in federal court; in order for the doctrine to apply, however, the last state court rendering judgment in the case must have based its judgment on the procedural default." 28 U.S.C.A. § 2254. Simpson-v-Jones, 238 F.3d.400 (6th.Cir.2000).

2. Respondent does not make any responsive argument on the claims of procedural defaults which petitioner has raised against Respondent; (a) Respondent was in procedural default by submitting a uncertified transcript (sentencing) in violation of App. Proc. Rule 9(B)(8); (b) as previously stated the State and Hamilton County Clerk of Courts failed to timely properly follow the procedural rules set down by the Ohio Supreme Court [to timely and properly provide defendant with final notice of the appealable order]. The Atkinson court set forth 3 rules for all Courts in Ohio to meet the due process requirements contemplated by Mallance-v-Center

Hanover Bank & Trust Co. (1950), 399 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865. "Procedures as enunciated by the Atkinson Court must be mandatorily" complied with in order to satisfy the due process requirements of what constitutes proper notice of a final appealable order". Atkinson v. Grumman Ohio Corp., 37 Ohio St. 3d. 80; 523 N.E.2d. 523 (Ohio 1988); Fed.R.Civ.Proc. Rule 77(d), 28 U.S.C.A., Rules App.Proc. Rule 4(a); Ohio Const. Art. 1, §16; Right to appeal is property interest that cannot be deprived. U.S.C.A. Const. Amends, 5, 14; Const. Art. 4, 3(B), (B1), (f), R.C. §2505.03, Civ.R. 5, 58(B); Petitioner was not provided timely proper notice of his final appealable order until 5-14-03 (copy signed by Hamilton County Clerk of Courts was provided to this court). Therefore, petitioner's time to appeal did not begin to run until 5-14-03. The Respondent would have the court to show favoritism and create a fundamental miscarriage of justice and dismiss petitioner's claims as procedurally defaulted and allow the Respondent's procedural defaults to stand on the records, not only would such a dismissal be prejudicial against petitioner it would deny petitioner due process protection of law under the 5, & 14th Amendments to the U.S. Constitution. Twice the Respondent has failed to respond to their procedural defaults.

Respectfully submitted,



Certificate of Service

I, hereby certify that a copy of this supplemental opposition was forward to Ohio Att. General Office at 30 E. Broad St., Columbus, Oh. per-paid first class U.S. mail on this 17th day of May 2006.